

D. REMARKS

This Amendment is in response to an Office Action bearing a mailing date of April 29, 2004. The Applicant's Attorney is appreciative of the detailed discussion of the art by the Examiner.

It is respectfully urged and re-iterated that the reference to the teachings of Tuai, U.S. Patent No. 5,153,918 (Tuai `918) as anticipating Claims 1 through 12 and now further Claims 13 through 19 pursuant to 35 USC §102(e) is, in several important respects, incorrect. Thus, once again the following differentiating aspects are highlighted. It is hoped that the inferences made by the Examiner that Tuai `918 teaches what the Applicant states are seen to be not so. The Application is quite different from Tuai `918 and each and every element of the Applicant's invention is not taught by Tuai `918.

Before proceeding further, the matters of in-band/out-of-band definitions and distinctions are addressed. There is a maxim in patent law, which arose long after dictionaries were compiled, that an Applicant is his own lexicographer. Here, the Examiner puts forth in supposed contradistinction to Applicant's choice of definitions those found in Newton's Telecom Dictionary (19<sup>th</sup> edition) and places Harry Newton's reference in her conclusion. Upon a close reading of the Application and of the definitions, the contradistinction disappears and agreement is found. In Newton's definition of **out-of-band signalling**, separation of control signals and of information transfer is described. This separation of signal channels is what Applicant has posited in his initial argument and

is what Applicant continues to maintain. Applicant has no problem accepting Newton so long as the agreeable portion of the definitions is used.

This Amendment by reference incorporates herein each and every passage of Tuai `918 cited by the Examiner as if set forth at length. In Tuai `918, there is no in-band/out-of-band distinction as the process takes place totally in-band. As argued previously, the security controller of Tuai `918 is a gatekeeper and not a device in a separate operating channel. Additionally, security functions are distributed differently, and remarkably so. In the two inventions - certain operations take place after verification in Tuai `918 which operations are compared to those of the Applicant which take place before verification. In security devices, the sequencing of events is of key importance. These distinctions are not subtleties, but are substantive. Not only does Tuai '918 lack the distinct channels of the Applicant, but the patent teaches away from out-of-band operation.

By way of further general comment, it is respectfully urged that the Examiner has erred by not viewing the totality of Applicant's invention. It is as though an Examiner in a mechanical case found screws, nuts, bolts, springs and shafts without seeing the new combination or in a chemical case found a hydroxyl radical here and benzene ring there without viewing the new structure.

It is respectfully urged that the Examiner has erred by citing in her conclusion reasoning based on a newly introduced reference, namely Coley *et al.*, U.S. Patent 5,826,014 but not indicating in

the *Detailed Action* how such a reference is applied. This clearly abrogates the procedural guidelines of the MPEP. Consequently, Applicant requests that this be stricken from the record and that the conclusion of rejection based on non-applied art be removed. Such out-of-band activity is respectfully urged to be inappropriate patent prosecution.

In support of the arguments which follow, the inventor prepared a Power Point demonstration which discusses the application of Tuai `918 as a reference and is attached hereto, Exhibit A.

Although incorporated by reference herein a few comparisons made by the Examiner between Tuai `918 and the Application are reviewed in the following re-iterated paragraphs.

In paragraph 2.a. of the Examiner's *Detailed Action*, it is stated that Tuai `918 teaches:

the central access controller receives an encrypted control signal corresponding to at least a portion of an orally generated speech pattern of a prospective users from a transponder disposed at least one of any number of remote locations... A voice verification unit is also included as part of the central access controller for comparing the compressed digital signal with a stored signal unique for each designated user of the system in order to permit access to the host computer if the signals compared are indeed identical...

As shown in Figure 1, the controller 15 is interconnected between the host computer 10 and the modem 12 thereat while each transponder 16 is interconnected between a user terminal 11 and the modem 13 thereat

and equates this with Claim 1 language, namely:

a security computer adapted to receive said demand for access together with said login identification and to communicate

with said host computer and with said associated telephonic device of said accessor...

It is respectfully urged that the quotation of Tuai `918 cited above does not teach what the Applicant presents in the case-at-hand. Tuai `918 teaches away from Applicant by stating that the controller 15 is interconnected between the host computer 10 and the modem 12. This defines an in-band system and is antithetical to Applicant's system which is defined as out-of-band.

Again, in paragraph 2.a. of the Examiner's *Detailed Action*, it is stated that Tuai `918 teaches:

the capabilities of the central access controller 15 also include the optional call-back measure to enhance the security of the communication system. With this, the central access controller 15 can be equipped with a single incoming line and at least one outgoing line. The incoming line is used for answering calls from one or more transponders 16 and each outgoing line is used to call back the designated user after verification

and equates this with Claim 1 language, namely:

a callback device operable in response to instructions from said security computer to call the accessor

It is respectfully urged that the quotation of Tuai `918 cited above does not teach what the Applicant presents. Applicant's callback device is in the out-of-band channel and as such is integrated into the verification process. This is directly contradistinguished from the after verification callback device of Tuai `918. An in-band callback device operating after verification is not an out-of-band device which is integral in providing verification. As the function differs, the Examiner's conclusion as to equivalence required for anticipation is absent.

Yet again, in paragraph 2.a. of the Examiner's *Detailed Action*, it is stated that Tuai `918 teaches:

When not being used for programming or access to the host computer 10, the controller 15 has a display 27 which is programmed to indicate the status of each of the communications lines of the controller 15. The status shows the length of time a user has been logged on, the time of log on, the number called (if programmed to use call back security), and other pertinent information so required

and equates this with Claim 1 language, namely:

said security computer adapted to provide callback instructions to said callback device to connect said associated telephonic device of said accessor to said security computer

Once again, it is respectfully urged that these are not equivalent, but are set in different applications with different functions and the Examiner has taken the Applicant's description out of the contextual setting that it enjoys.

Further in paragraph 2.a. of the Examiner's *Detailed Action*, it is stated that Tuai `918 teaches:

the capabilities of the central access controller 15 also include the optional call-back measure to enhance the security of the communication system. With this, the central access controller 15 can be equipped with a single incoming line and at least one outgoing line. The incoming line is used for answering call from one or more transponders 16 and each outgoing line is used to call back the designated user after verification. The central access controller 15 is equipped to prompt the user to enter a telephone number to be used for a call back operation after verification [The inventor mentioned above the use of the telephone lines, which inherently can be used for the traditional telephone including keypad].

and equates this with Claim 2 language, namely;

said callback device is a telephone; said associated telephonic device of said accessor is a tone generating instrument with a keypad for entering data; and, said prompt means is an

auditory message describing data to be entered

Here, it is respectfully urged that unlike devices are compared and while the Inventor of the subject application uses a telephone and a keypad for entry of voice and data, Tuai `918 does not. It is formally requested that the inherency recited by the Examiner be clarified as provided in the applicable regulations of MPEP.

Further, in paragraph 2.a. of the Examiner's *Detailed Action*, it is stated that Tuai `918 teaches:

when the call to the central access controller 15 is answered by the controller modem 12, the controller 15 polls the caller looking for the proper automatic response from the transponder 16. If the transponder 16 does not respond, the call is terminated by the controller 15. Once access is granted, the controller 15 commands the transponder 16 to request identification from the user. It is here that the user provides the proper keystrokes (ASCII input) and/or speech and/or other identification

and equates this with Claim 3 language, namely:

upon attaining an access-granted condition said security computer communicates the status to said accessor by selecting and transmitting an access-granted message from said announcement database and sequentially disconnecting from the connection with said telephone

It is respectfully urged that the quotation of Tuai `918 cited above does not teach what the Applicant presents in the case-at-hand. Tuai `918 teaches away from Applicant by stating that the commands from controllers 15 to the transponder 16 requests an in-band action following verification. This is sharply different from Applicant's functions.

Further, in paragraph 2.a. of the Examiner's *Detailed Action*, it is stated that Tuai '918 teaches:

the transponder digitizer 18 is an analog-to-digital converter, a device which converts analog signals to digital signals and is used specifically in this computer access security system to receive the analog signal corresponding to spoken word(s) of designated users. The analog-to-digital converter 18 may be a CODEC design with 12 bit accuracy, encoding 12 bits of data into 8 bits of data with negligible loss of voice data. As a side benefit from the use of the CODEC device, the transponder 16 is capable of speech playback as well as speech prompts to the user

and equates this with Claim 5 language, namely:

a voice module, in response to instructions from said security computer, capable of synthesizing an auditory message, and, for prompting the entry of data by said accessor, playing a synthesized auditory message over said telephone

Once again, it is respectfully urged that these are not equivalent, but are set in different applications with different functions and the Examiner has taken the Applicant's description out of the contextual setting that it enjoys.

Further, in paragraph 2.a. of the Examiner's *Detailed Action*, it is stated that Tuai '918 teaches:

voice verification, as embodied in the present system, requires the user to speak from one to five words into a microphone or speaker 21 which is part of the transponder device 16. The security system can be programmed to require a prospective user to repeat the required words up to three times.

and equates this with Claim 7 language, namely:

voice sampling means for instruction said accessor to repeat back and transmit a predetermined auditory statement over said associated telephonic device to said security computer

It is respectfully urged that, while both the reference and the Applicant utilize voice verification techniques, the practices

are significantly different from a security perspective and especially so when the in-band/out-of-band aspect is considered. Thus, when read in context, these are not equivalent.

Further, in paragraph 2.a. of the Examiner's *Detailed Action*, it is stated that Tuai `918 teaches:

the function of the controller 15 is to receive all incoming calls and to verify voice passwords or other identification means

and equates this with Claim 7 language, namely:

voice recognition means in said security computer for authenticating access demands in response to transmission of said predetermined auditory statement received over said associated telephonic device of said accessor

Once again, it is respectfully urged that, while both the reference and the Applicant utilize voice verification techniques, the practices are significantly different from a security perspective and especially so when the in-band/out-of-band aspect is considered. Thus, when read in context, these are not equivalent.

Further, in paragraph 2.a. of the Examiner's *Detailed Action*, it is stated that Tuai `918 teaches:

receive all incoming calls and to verify voice, passwords or other identification

and equates this with Claim 8 language, namely:

interception means for receiving and verifying said identification number and password

It is respectfully urged that all interception means are not equivalent. Applicant's interception means is in and out-of-band



channel isolated from the host computer with which the accessor (see definitions of *out-of-band* and *accessor* in the specification) seeks to connect.

a voice verification unit is also included as part of the central access controller for comparing the compressed digital signal with a stored signal unique for each designated user of the system in order to permit access to the host computer system if the signals compared are indeed identical

and equates this with Claim 8 language, namely:

a security computer receiving from said interception means said verification of said accessor together with said identification number thereof, said security computer structured to communicate with said web server and with said telephonic device associated with said accessor, said computer adapted to provide instructions to connect and disconnect said security computer to and from said associated telephonic device of said accessor

Once again, it is respectfully urged that all interception means are not equivalent. Applicant's interception means is in and out-of-band channel isolated from the host computer with which the accessor (see definitions of *out-of-band* and *accessor* in the specification) seeks to connect.

Implicit in the above review of the Examiner's **Detailed Action** is that at every juncture the overall sense of the newly claimed subject mater has been ignored in favor of suggested equivalents. When reviewed once again, it is clear that substantial hindsight is employed to squeeze the footprint of Applicant's claim into the ambit of Tuai '918 teachings. Such use of hindsight in

patent examination is proscribed by case law and the MPEP.

Notwithstanding the Examiner's Conclusion in the above-subject final rejection, the prior art made of record and not relied upon, to wit Coley *et al.*, U.S. Patent 5,826,014; Handy-Swink, U.S. Patent 5,901,284; and, Cane, U.S. Patent 6,408,062, has been reviewed; however, it is not seen how these references can be applied to the case at hand.

With the above-recited Amendments incorporated into the Application, it is respectfully urged that the Applicant has responded to each and every objection and rejection. An early and favorable review is anticipated.

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